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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

The Role of Prevention in the Promotion and Protection of Human Rights

Report of the Office of the United Nations High Commissioner for Human Rights

Summary

In resolution 24/16, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to draft a study on the prevention of human rights violations and its practical implementation, and to present the study to its thirtieth session. As requested in the resolution, this study takes into account the outcome of the panel discussion on the role of prevention in the promotion and protection of human rights, held at the twenty-seventh session of the Council.

This study seeks to provide further content to the concept of prevention of human rights violations, identify practical means through which to prevent violations, and highlight the role of international and regional stakeholders.

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Contents

		Page
I.	Introduction	3
II.	Concept of prevention	3
III.	Prevention in practice	6
	A. Legislative and institutional framework for prevention	6
	B. The role of human rights education	9
	C. Planning and monitoring tools	11
IV.	Role of international and regional stakeholders in prevention	14
	A. International and regional human rights mechanisms	14
	B. Contribution of international and regional organizations to prevention	16
V.	Conclusions and recommendations	17

I. Introduction

1. In resolution 24/16, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to draft a study on the prevention of human rights violations and its practical implementation, and to present the study to its thirtieth session. As requested in the resolution, this study takes into account the outcome of the panel discussion on the role of prevention in the promotion and protection of human rights, held at the twenty-seventh session of the Council (A/HRC/28/30).

2. In preparation for this study, OHCHR sought contributions through a questionnaire addressed to States, national human rights institutions (NHRIs), civil society, relevant intergovernmental bodies and international organizations. The questionnaire covered issues including which legislative, judicial and administrative measures – as well as action-oriented policies, practices and strategies to prevent human rights violations and abuses – are in place at the national level; and provisions for effective remedies for victims. It sought information on policies and processes for collection, maintenance and analysis of statistical data on human rights; the steps taken to promote a human rights culture; the role of civil society; measures and procedures for following up on recommendations from international and regional human rights bodies; and the contribution of such bodies to the prevention of human rights violations. Information was provided by Albania, Argentina, Australia, Cuba, Cyprus, Georgia, Honduras, Hungary, Ireland, Italy, Kazakhstan, Madagascar, Mexico, the Republic of Moldova, Paraguay, Qatar, Slovakia, Togo, Trinidad and Tobago, Ukraine and United Arab Emirates; as well as by Austrian Ombudsman Board, Her Majesty's Inspectorate of Prisons, Finnish Human Rights Centre, Human Rights Commission of Malaysia, Comision Nacional de los Derechos Humanos Mexico, Commission Nationale des Droits de la Personne du Rwanda, Human Rights House of Albania, International Fellowship of Reconciliation, Jordan National Centre for Human Rights, Agence de Diffusion de Droit International Humanitaire en Afrique Centrale, National Human Rights Commission of Korea, Ombudsman of the Republic of Latvia, Promo-LEX Association, Scholars at Risk, and the Slovak National Centre for Human Rights.[1]

3. This report seeks to provide further content to the concept of prevention of human rights violations (Part II); identify practical means through which to prevent violations (Part III); and highlight the role of international and regional stakeholders (Part IV).

II. Concept of prevention

4. By becoming parties to international treaties, States assume obligations and duties under international law to respect, protect and fulfil human rights for all persons within their territory or jurisdiction, without discrimination of any kind.[2] Further, "States, including all branches thereof, have the primary responsibility for the promotion and protection of all human rights, including the prevention of human rights violations".[3] The

[1] The full text of the replies is available from the Secretariat.

[2] Art. 2, International Covenant on Civil and Political Rights and the Human Rights Committee's General Comment 31 (2004); art. 2, Convention on the Rights of the Child and the Convention on the Rights of the Child's General Comment 5 (2003).

[3] A/HRC/RES/24/16, para. 2. The Inter-American Court of Human Rights has held that States have "a legal duty to take reasonable steps to prevent human rights violations" (*Velasquez Rodriguez v. Honduras*, 29 July 1988). E. Decaux and S. Touzé, *La Prévention des Violations des Droits de l'Homme* (Paris, Editions A. Pedone, 2015).

obligations of States include the duty to protect against human rights abuse by third parties, including private actors.[4] States may breach their international human rights law obligations where they fail to take appropriate steps to prevent, investigate, punish and redress private actors' abuse.[5]

5. The obligation to prevent human rights violations is expressly formulated in some treaties[6] and has been addressed more broadly in human rights treaty bodies' General Comments[7] and reports, notably in relation to: the prevention of torture,[8] genocide,[9] mass atrocities,[10] incitement to hatred,[11] violent extremism,[12] and the elimination of discrimination on particular grounds (such as race,[13] religion or belief[14] or sexual orientation (A/HRC/29/23)) or with regard to a particular group (such as women,[15] persons with disabilities[16] and minorities (A/HRC/28/30, paras. 13–14); A/69/66). The consideration of prevention of violation of these specific rights highlights some common features and approaches to prevention, including the identification of risk and mitigating factors, and the development of some practical tools.

6. For example, the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity requires "sustained efforts to build the resilience of societies to atrocity crimes by ensuring that the rule of law is respected and that all human rights are protected, without discrimination; by establishing legitimate and accountable national institutions; by eliminating corruption; by managing diversity constructively; and by supporting a strong and diverse civil society and a pluralistic media".[17] Further, the Protocol for the Prevention

[4] See Human Rights Committee General Comment 31, para. 8 and Communication No. 195/1985, *Delgado Paez v. Colombia*, Views adopted on 12 July 1990; Convention on the Elimination of All Forms of Discrimination against Women General Recommendations 19 and 28. The European Court of Human Rights has established that claims may arise against the State when the police fail to protect individuals from violations of their rights by other individuals (*Osman v. United Kingdom* (Appl. No. 87/1997/871/1083), judgment of 28 October 1998.

[5] Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (annex of A/HRC/17/31), endorsed by Human Rights Council resolution 17/4.

[6] For example, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (art. 2); Convention on the Prevention and Punishment of the Crime of Genocide (art. 1).

[7] Most recently, Joint Convention on the Elimination of All Forms of Discrimination against Women General Recommendation No. 31/ Convention on the Rights of the Child General Comment No. 18 on harmful practices (CEDAW/C/GC/31-CRC/C/GC/18).

[8] E.g. Subcommittee on Prevention of Torture under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/OP/12/6); A/HRC/18/24, para. 8.

[9] E.g. by the Office of the United Nations Special Adviser on the Prevention of Genocide and of the Special Adviser on the Responsibility to Protect. E/CN.4/2000/12, paras. 3–10; A/HRC/10/25.

[10] Framework of Analysis for Atrocity Crimes: A tool for prevention (United Nations, 2014); A/64/864.

[11] Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4), appendix.

[12] The Secretary-General announced the drafting of a United Nations Plan of Action to Prevent Violent Extremism in February 2015.

[13] Committee on the Elimination of Racial Discrimination. See Developing National Action Plans Against Racial Discrimination: A Practical Guide (United Nations, 2014).

[14] Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

[15] See the broad range of actions required of States in art. 2, Convention on the Elimination of All Forms of Discrimination against Women.

[16] Arts. 12 and 16, Convention on the Rights of Persons with Disabilities.

[17] Framework of Analysis (footnote 10 above), p. 3.

and the Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination[18] seeks to ensure that States respond to root causes by prohibiting discrimination and condemning discriminatory ideologies, combating impunity, and establishing early warning mechanisms.

7. Some treaty provisions point to an obligation of negative result (prevention being successful when there is no violation),[19] while in some cases prevention can be seen as an obligation of positive conduct (taking all necessary steps to adopt concrete and effective measures to prevent violations).[20] The International Court of Justice has declared that the obligation to prevent genocide is one of conduct and not one of result, in the sense that a State cannot be under an obligation to succeed, whatever the circumstances, in preventing the commission of genocide; the obligation is rather to employ all means reasonably available to them so as to prevent genocide so far as possible.[21] In this regard, article 6 of the Arms Trade Treaty prohibits any transfer of conventional arms where the State party has knowledge at the time of authorization that the arms would be used notably in the commission of genocide and crimes against humanity.

8. Furthermore, the terminology used for instance in relation to the prevention of torture usefully distinguishes between specific practical actions which need to be taken for preventive purposes (direct prevention or mitigation), and the response to violations which needs to be taken in order to remedy those violations and prevent recurrence (indirect prevention or non-recurrence).[22]

Direct prevention/mitigation

9. Direct prevention aims to eliminate risk factors and establish a legal, administrative and policy framework which seeks to prevent violations. It is also contingent on establishing a culture of respect for human rights, good governance[23] and the rule of law, and an enabling environment for a vibrant civil society and free press. For example, the prevention of torture and cruel, inhuman and degrading treatment or punishment includes adopting laws prohibiting their use and providing for prosecution of those who violate them. It also includes putting in place procedural safeguards – such as registers in places of detention and video recordings of interrogations – as well as ensuring independent oversight, including regular monitoring of places of detention by independent bodies.

Indirect prevention/non-recurrence

10. Indirect prevention of human rights violations, or non-recurrence, takes place after a violation has occurred. It aims to prevent recurrence by identifying and addressing causes of violations of all human rights,[24] through investigation and prosecution, ensuring the right

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[18] International Conference on the Great Lakes Region, 29 November 2006.

[19] See art. 3, Committee on the Elimination of Racial Discrimination; art. 2, Convention on Slavery; art. 1, Convention on the Prevention of Genocide.

[20] See art. 19, Convention on the Rights of the Child; and E. Decaux and S. Touzé (footnote 3 above).

[21] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, *I.C.J. Reports 2007*, p. 43.

[22] A/HRC/18/24, para. 36; A/HRC/28/30, para. 22; and "Preventing Torture: An Operational Guide for National Human Rights Institutions", p. 3 (OHCHR, Association for the Prevention of Torture, and Asia Pacific Forum, HR/PUB/10/1).

[23] See Good Governance Practices for the Protection of Human Rights (United Nations 2007).

[24] The United Nations system approach to transitional justice can be helpful to frame a preventive approach in seeking to prevent recurrence of human rights violations which have occurred (including

of victims and societies to know the truth about violations, and the right of victims to an effective remedy,[25] in accordance with international law.[26] Indeed, "effective domestic mechanisms of oversight, including complaints mechanisms, form an essential part of the apparatus of prevention. These mechanisms will take a variety of forms and operate at many levels" (CAT/OP/12/6, para. 5(g)).

III. Prevention in practice

11. This section will consider the practical implementation of prevention of violations, namely the importance of establishing a legislative and institutional framework for prevention; the crucial role of human rights education; and how planning and monitoring tools can contribute to prevention, in particular in the development of policies.

A. Legislative and institutional framework for prevention

12. The creation of a preventive legislative and institutional framework requires a coherent and complementary range of actions, underpinned by an inclusive and participatory approach which includes women and others who face discrimination. As a first step, prevention includes ratifying human rights treaties[27] and adopting laws and policies that guarantee human rights in law and practice. For example, this can include introducing a positive duty on public bodies to have due regard to human rights and equality in their work and conduct their business in a manner that is consistent with human rights.[28]

13. Regular and systematic review of existing and proposed legislation for compliance with a State's human rights obligations is an important safeguard.[29] Such review may be done through a judicial, parliamentary or internal State process. National human rights institutions[30] may be specifically mandated to complement such a review and to provide

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identifying root causes) and engendering institutional reform in relation to State structures and institutions that facilitated or promoted such violations. Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice (United Nations, 2010); Transitional Justice and Economic, Social and Cultural Rights (United Nations, 2014).

[25] The Human Rights Committee has taken the view that the right to an effective remedy may in certain circumstances require State parties to provide for and implement provisional or interim measures to avoid continuing violations and to endeavour to repair at the earliest possible opportunity any harm that may have been caused by such violations (General Comment No. 31, para. 19).

[26] Art. 2, International Covenant on Civil and Political Rights; art. 2, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; art. 23, Committee on Enforced Disappearances; LaGrand Case (*Germany v. United States*), Judgment, *I.C.J. Reports 2001*; E/CN.4/2005/102/Add.1, principle 35.

[27] Response by Madagascar.

[28] Response by Ireland.

[29] E.g. Recommendation Rec(2004)5 of the Committee of Ministers of the Council of Europe to Member States on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights. See related discussion below about impact assessments of proposed laws and policies.

[30] Response by the Republic of Moldova; Response by Hungary. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment specifies that the "State should inform the [National Preventive Mechanism] of any draft legislation that may be under consideration which is relevant to its mandate and allow the NPM to make proposals or observations on any existing or draft policy or legislation. The State should take into consideration any proposals or observations on such legislation received from the NPM." (CAT/OP/12/5, para. 28).

relevant authorities with information about compatibility or recommendations, which have led to changes in proposed laws or policy. Review may also require that draft legislation be submitted to a body prior to being sent to the legislature, with an accompanying document specifying that it has been reviewed and is compatible with the State's human rights obligations.[31] The review process may include consultation with other actors such as civil society, to provide additional information and expertise throughout the legislative process.[32] Bodies mandated to undertake such a review should be independent, impartial and their comments taken into account when revising legislation or policies.

14. Further, international human rights norms and standards should become part of the national legal system[33] so as to ensure they can be invoked in national courts. This requires the establishment of an effective system of administration of justice,[34] with courts empowered to interpret constitutional provisions in line with the State's human rights obligations and international or regional jurisprudence,[35] and enabling them to strike down laws which are deemed unconstitutional.[36]

Need for a victim-centred approach to prevention

15. Provisions should be in place to provide effective remedies for victims. The establishment of effective monitoring mechanisms to check for actual and potential violations, and to ensure that groups or individuals are not discriminated against in law, policy and practice, is also key. Indeed, prevention is "as much the practice as it is the content of a State's legislative, administrative, judicial or other measures" (CAT/OP/12/6, para. 3).

16. The legal system should be accessible to all, without discrimination on any grounds, including nationality, financial means and language. In turn, this requires that victims know about their rights, available remedies and how to access them. Similar issues arise where non-judicial remedies are used. Provision of free legal advice and pro bono services for victims of human rights violations by NHRIs, civil society, and bar associations can assist in ensuring accessibility of remedies.

National human rights institutions

17. The establishment of NHRIs compliant with the Paris Principles[37] constitutes another important institutional element of the preventive framework. Some are specifically

[31] Response by Australia.
[32] Response by Human Rights House of Albania.
[33] Response by Togo. See Human Rights Committee General Comment 31, para. 13.
[34] Response by Promo-LEX.
[35] Response by the International Fellowship of Reconciliation.
[36] E.g. South Africa Constitutional Court: *Government of the Republic of South Africa. & Ors v. Grootboom & Ors* 2000 (11) BCLR 1169 (CC) (which held that the Government had failed to meet its obligation to provide for those desperately in need of adequate housing); and *Minister of Health v. Treatment Action Campaign* (TAC) (2002) 5 SA 721 (CC) (which held that the Government had breached its human rights obligations by failing to take reasonable measures (at affordable cost) to make wider provision of anti-retroviral medication to prevent mother-to-child transmission of HIV). See also *People's Union for Civil Liberties and another v. Union of India and others*, Supreme Court of India, Civil Original Jurisdiction, Writ Petition (Civil) No. 196 of 2001, judgment of 2 May 2003 (concerning the right to food in the context of a preventable famine in Rajasthan). See Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation (United Nations 2006), p. 3.
[37] Principles relating to the status of national institutions, A/RES/48/134, annex.

mandated to contribute to the prevention of violations,[38] and to investigate complaints and undertake conciliation, mediation and settlement, as well as analyse root causes of violations and recommend remedial action to prevent recurrence. Their contribution to indirect prevention may be strengthened when they are mandated to consider the government policy underlying the issue. Some NHRIs are also able to make representations in court about the State's obligations under international human rights law.[39]

18. NHRIs also contribute to direct preventive measures through on-site visits and investigations in places where persons are deprived of their liberty,[40] and some are designated as national preventive mechanisms (NPMs) under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Developing a "culture" of monitoring through regular, unannounced inspections and independent, effective and timely complaints systems, is key to profound behavioural and institutional change.[41] Inspections may look at systemic problems as well as individual situations, and result in timely public reporting of findings and recommendations. Reports may include a requirement that those who are inspected produce an action plan within a specified time period, that includes whether recommendations are accepted in whole, in part or rejected, and the action taken or planned in response. In turn, this plan can be monitored by the inspecting body, and forms the basis for the next inspection. In this way, action, monitoring and follow-up are built in to a regular, ongoing system.

Role of civil society

19. The provision of a protective and enabling environment in law and practice for civil society is also an important element for prevention. This includes a conducive legal, institutional and administrative framework; access to justice and an end to impunity for violations against defenders; strong and independent NHRIs; effective protection policies and mechanisms paying attention to groups at risk; specific attention to women defenders; non-State actors that respect and support the work of defenders; safe and open access to international human rights bodies; and a strong and dynamic community of defenders.[42] Reprisals for communicating with national, regional and international human rights mechanisms should also be prohibited.[43]

20. Indeed, civil society has a vital role to play in the prevention of human rights violations.[44] They assist in identifying issues of concern, monitoring and advising on laws, policies and practices of States and private actors, bringing their grassroots contacts and expertise on issues to bear in all these respects. Civil society[45] also engages in human rights education and training, including helping to change perceptions about groups and issues.

[38] Response by Commission Nationale des Droits de la Personne, Rwanda. Some NHRIs are also nominated as the independent authority under art. 33, Convention on the Rights of Persons with Disabilities.

[39] Response by the Human Rights Commission of Malaysia.

[40] Response by the Comision Nacional de los Derechos Humanos Mexico.

[41] Response by Her Majesty's Inspectorate of Prisons.

[42] Report of the Special Rapporteur on the situation of human rights defenders, Elements of a safe and enabling environment for human rights defenders (A/HRC/25/55). See also "Civil Society Space and The United Nations Human Rights System" (OHCHR, 2014); General Assembly resolution 53/144, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

[43] See recommendations in A/HRC/28/63; Policy of the Subcommittee on Prevention of Torture on reprisals in relation to its visiting mandate.

[44] Response by Trinidad and Tobago.

[45] Response by Cuba.

These activities inform and lead into their engagement in regional and international human rights reporting mechanisms, starting with engagement at the national level, through the national consultations and report preparation, through the external aspect, and back to the national level for the implementation phase. Their role in bringing cases at the national, regional or international level is also important.

Measures regarding prevention of human rights abuses by private actors

21. States generally have discretion in deciding upon the appropriate steps to prevent, investigate, punish and redress private actors' abuse. They should consider the full range of permissible preventative and remedial measures, including policies, legislation, regulations and adjudication.[46] For example, with relation to discrimination against women, the appropriate measures include the regulation of the activities of private actors with regard to education, employment and health policies and practices, working conditions and work standards, and other areas in which private actors provide services or facilities, such as banking and housing (CEDAW/C/GC/28, para. 13).

22. Importantly, States do not relinquish their international human rights law obligations when they privatize the delivery of services[47] such as water and sanitation (A/HRC/15/31), education (A/69/402) or powers of arrest or detention.[48] States should ensure that they can effectively oversee the enterprises' activities, including through the provision of adequate independent monitoring and accountability mechanisms.

23. Concomitantly to State obligations, the Guiding Principles on Business and Human Rights[49] set out the elements which business enterprises should follow in order to meet their corporate responsibility to respect human rights. First, they must institute a policy commitment to meet the responsibility to respect. Second, they must undertake ongoing human rights due diligence to identify, prevent, mitigate and account for their human rights impact, and be prepared to communicate their commitment and actions externally, including to those groups likely to be affected by their operations. As operations, context and impact may change, a business enterprise should periodically reassess its potential or actual impact on all human rights. Business enterprises should also seek to prevent or mitigate any adverse impact that is directly linked to their operations, products or services through their business relationships. Finally, they must have processes in place to enable remediation for any adverse human rights impact to which they cause or contribute.

B. The role of human rights education

24. Human rights education contributes to the prevention of human rights violations and conflict, and to the enhancement of participation in decision-making processes within a democratic system.[50] It should be intended as a lifelong and participatory process developing knowledge, skills and attitudes which prompt behaviour to defend and promote human rights. In this sense, it empowers rights-holders to claim their rights, and develops the capacity of those with power and responsibility (duty-bearers), such as the police,

[46] Guiding Principle 1 on Business and Human Rights.

[47] Ibid., Guiding Principle 5 and commentary.

[48] Human Rights Committee General Comment No. 35, para. 8.

[49] See also "The Corporate Responsibility to Respect Human Rights – An Interpretive Guide" (OHCHR, 2012).

[50] United Nations Declaration on Human Rights Education and Training, para. 2; A/HRC/27/28, paras. 1–9.

military and public officials,[51] to meet their obligations to protect, respect and fulfil human rights. Inadequate human rights education has been identified as one of the greatest obstacles to the enjoyment of all human rights by all persons (A/HRC/28/30, para. 20).

25. Human rights education is primarily a State responsibility.[52] States should systematically infuse human rights education in the formal education system, and in the training of State agents. For example, training of judges and lawyers should encompass human rights norms and standards as well as related international and regional jurisprudence.[53] Specific and methodologically-sound guidance is provided by the Plans of Action for the first (primary and secondary school systems) and second phase (higher education and training of civil servants, law enforcement officials and the military) of the World Programme for Human Rights Education,[54] which seeks to advance national implementation of human rights education programmes in all sectors. The Human Rights Council has reviewed the evaluation report (A/HRC/30/24) of the second phase of the World Programme, based on national evaluation reports submitted by States; and States could consider including national implementation of human rights education as a regular element in the Universal Periodic Review.[55]

26. Human rights education and training include curriculum and material development, the use of learner-centred and participatory methodologies, the adoption of enabling policies and policy implementation measures, and the fostering of learning environments in which human rights are respected. To enable this, related knowledge and skills of teachers and educators should be strengthened. Inclusive schools, universities and educational institutions which promote human rights, model respect for others, and embrace and celebrate diversity can be key in fostering both inclusivity itself and inclusive attitudes, and should be encouraged and protected by the State.[56]

27. In addition to being a specific responsibility of the State, human rights education is also undertaken by other stakeholders, including NHRIs (A/HRC/28/30, para. 20) and civil society.[57] OHCHR supports national efforts for human rights education through its field presences, coordinates the World Programme for Human Rights Education, provides expert advice, elaborates and disseminates methodological tools based on good practice, and maintains resources to facilitate information-sharing.[58]

28. Many NHRIs promote human rights education using a variety of tools including radio programmes, games and interactive tools, and online programmes. NHRIs also focus on specific groups that are more likely to face discrimination or violations. This includes programmes aimed at specific groups and those interacting with these groups, such as social services, teachers and school staff, and police. NHRIs may identify particular needs of specific groups through their monitoring role, individual cases and broader statistical analysis, which demonstrates the benefits of coherence and cross-fertilization between the different functions of these bodies.

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[51] Response by Cyprus; Response by Mexico; Response by the United Arab Emirates.

[52] See "The Right to Human Rights Education", a web resource which compiles relevant commitments made by States in international and regional intergovernmental forums, available from: http://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/Listofcontents.aspx.

[53] Bertrand G. Ramcharan, *Preventive Human Rights Strategies* (London, New York, Routledge, 2010) p. 52.

[54] General Assembly resolution 59/113, World Programme for Human Rights Education.

[55] Response by the Finnish Human Rights Centre.

[56] Response by Scholars at Risk. See Global Coalition to Protect Education from Attack: Principles of State Responsibility to Protect Higher Education from Attack.

[57] Response by Agence de Diffusion de Droit International Humanitaire en Afrique Centrale.

[58] See http://www.ohchr.org/EN/Issues/Education/Training/Pages/HREducationTrainingIndex.aspx.

29. NHRIs also promote public awareness of human rights[59] in the media, through press releases, reports, expert opinions and recommendations[60] (including advocacy for the ratification of human rights treaties[61]). NHRIs have created Visitor Centres as a means of education and outreach, and some take part in television programmes including to present cases and issues to the public.[62] Finally, NHRIs further serve to share good practices and lessons learned between States where their recommendations and views are made public, for example as part of annual reports.

C. Planning and monitoring tools

30. A number of planning and monitoring tools may assist States and other stakeholders in the prevention of human rights violations, in particular in the development of policies. Some States have developed national action plans on human rights[63] or action plans on specific thematic issues,[64] which can serve to guide prevention efforts. Further, the establishment of a body which brings together relevant State entities, NHRIs and civil society to advise either the State or the NHRI in relation to human rights issues in general or in relation to a specific group,[65] for example older persons,[66] is also important.

Human rights impact assessments

31. Human rights impact assessments are instruments for examining policies, legislation, programmes and projects prior to their adoption to identify and measure their impact on human rights (e.g. A/HRC/19/59/Add.5). They are designed to identify the intended and unintended impact on the enjoyment of human rights, and the State's ability to protect and fulfil them. As such, they are a planning tool to prevent human rights violations by assessing the formal or apparent compatibility of laws, policies, budgets[67] and other measures with human rights obligations, as well as the likely impact in practice, thus creating the opportunity for reconsideration, revision or adjustment prior to adoption. Prior consultation with relevant stakeholders can assist in identifying possible impacts on human rights. Such efforts can lead to government branches and departments adopting a mandatory human rights-based approach to planning, as well as a mandatory and systematic use of international and regional human rights mechanisms recommendations in the formulation of public policies.[68] A noteworthy and recent example includes the requirement in article 7 of the Arms Trade Treaty that, when a proposed transfer of conventional arms is not prohibited, the exporting State must still assess notably where they could be used to commit

[59] Response by Qatar; Response by the National Human Rights Commission of Korea.
[60] Response by the Slovak National Centre for Human Rights.
[61] Response by the Jordan National Centre for Human Rights.
[62] Response by the Austrian Ombudsman Board.
[63] The Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights in 1993 recommended that "Each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights." See *Handbook on National Human Rights Plans of Action* (United Nations, 2002).
[64] Response by Albania; Response by Kazakhstan; Response by Honduras. Submissions reflected a wide range of legislation, policies and programmes including with regard to trafficking, migration, and violence against women. See also A/HRC/18/24, paras. 9–10.
[65] Response by Argentina; Response by Georgia. See also A/HRC/18/24, paras. 18–19.
[66] Response by Slovakia.
[67] The Convention on the Rights of the Child has raised the importance of budgeting in relation to the best interests of the child (General comment No. 14 (2013), para. 35). See also A/HRC/28/30, para. 19.
[68] For illustrations, see OHCHR Annual Report 2011, pp. 64–66.

or facilitate serious violations of international human rights law or international humanitarian law.

32. When undertaken by policymakers, human rights impact assessments can ensure that all human rights are factored into policy development at the earliest possible stage. For example, policy planning should ensure adequate social protection and combat social exclusion. This is crucial in particular as many States have responded to the recent global financial crisis with austerity measures that significantly cut social sector spending.[69] According to a recent OHCHR report, "cuts in public sector employment and in funding for social safety nets have resulted in the denial or infringement of economic, social and cultural rights, especially for populations that are already marginalized or at risk of marginalization and in some cases may violate the prohibition on discrimination in the enjoyment of human rights" (E/2013/82, para. 70). The Chairperson of the Committee on Economic, Social and Cultural Rights has in this regard noted that, to comply with their human rights obligations, States parties to the Covenant on Economic, Social and Cultural Rights must justify austerity measures by demonstrating that such measures actually protect the rights outlined in the Covenant, and particularly the rights of the most vulnerable. This requires States to demonstrate that all other alternatives have been exhausted and that the measures are necessary, proportionate, respectful of minimum core obligations and non-discriminatory.[70]

Data collection and analysis of statistics

33. Data collection and analysis of statistics about the population and specific issues is essential to prevent and address discrimination against specific groups. This in turn requires that data coverage is sufficiently accurate and representative: where groups are not included in the first place in data collection, their absence from programmes, or discrimination against them, will not appear in statistics. Participation by NHRIs, civil society, specific groups and statisticians in the preparation of surveys and questionnaires helps to minimize this risk. A human rights approach to data disaggregation requires reaching the most vulnerable and marginalized groups, and ensuring that human rights safeguards are in place for the collection, processing, analysis and dissemination of that data (including ensuring the rights to data protection, registration and self-identification).[71]

34. Helplines, complaint and petition registries of NHRIs (A/HRC/18/24, para. 43) and similar programmes are a useful supplement to systematic data collection and may also provide a basis for identifying issues and problems that are not being adequately addressed or had not previously been identified.

Human rights indicators

35. Human rights indicators[72] are essential tools to help States assess their own progress in ensuring the enjoyment of human rights by their people, planning for actions to prevent human rights violations, and monitoring the implementation of such actions for effectiveness and whether adjustments or further actions are needed. In the work of the

[69] Response by the Ombudsman of the Republic of Latvia.

[70] Arranga G. Pillay, Chairperson, Committee on Economic, Social and Cultural Rights, Letter to States Parties, 16 May 2012, available from http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf.

[71] "SDGs [Sustainable Development Goals] Indicator Framework: A Human Rights Approach to Data Disaggregation to Leave No One Behind" (OHCHR, 2015).

[72] Human Rights Indicators: A Guide to Measurement and Implementation (United Nations, 2012). See also E/2011/90 on the use of indicators in realizing economic, social and cultural rights.

United Nations human rights treaty bodies, for example, the use of appropriate indicators is a way to help State parties make precise and relevant information available to the treaty bodies, and to help them assess progress in the implementation of State obligations under the treaties.[73]

36. OHCHR has developed a conceptual and methodological framework of indicators that can be applied and contextualized through participatory processes at the national level. The framework recommends the development of structural, process and outcome indicators. This configuration should help assess the steps being taken by States in addressing their obligations – from commitments and acceptance of international human rights standards (structural indicators) to efforts being made to meet the obligations that flow from the standards (process indicators) and on to the results of those efforts (outcome indicators). For example, with regard to the right to liberty and security of person, a structural indicator might indicate the date of entry into force and coverage of the right in the constitution; a process indicator might reflect the proportion of complaints received on the right investigated and adjudicated by the NHRI; and the outcome indicator would indicate the proportion of arrests and detentions declared unlawful by national courts.[74]

Follow-up to recommendations by human rights mechanisms

37. The development of tools to follow up on recommendations addressed to States by human rights mechanisms is also very important. In the first instance, compiling recommendations in a publicly available, accessible and coherent form[75] enables relevant government bodies and other stakeholders to monitor their implementation. This could take the form of a publicly available and regularly updated online database which could indicate the status of implementation, and would also facilitate the consideration of such recommendations in the development or revision of any national strategy or plan of action on human rights. Specific laws or procedures can be adopted for the national implementation of international and regional jurisprudence, and invite a representative of the victim to participate in the governmental body charged with national implementation of that individual case.[76] Standing mechanisms can also be established within ministries to monitor the implementation of recommendations, in particular in light of structural issues which may have been identified through regional human rights mechanisms, and to seek to prevent further violations based on these issues.[77]

38. The implementation of human rights recommendations from human rights mechanisms into national policies and programmes requires effective coordination, an analytical framework and a harmonious methodological approach. The causes of human rights violations may be obvious, for example laws or policies which exclude certain groups from education. They may also be more complex and encompass a range of legal, policy, practical and social attitudes. Participation of affected persons can help to identify the causes and to consider possible solutions, as well as address the right to participate in decisions. The establishment of inclusive standing coordination and follow-up mechanisms has proven a useful tool in that regard (A/HRC/27/41, para. 101). Consultation and

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[73] E.g. the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment recommended that Honduras should develop disaggregated indicators to monitor and document incidents of inter-prisoner violence with a view to revealing root causes and designing appropriate prevention strategies (CAT/C/HND/CO/1, para. 17).

[74] Human Rights Indicators (footnote 72 above), p. 88.

[75] E.g. Universal Human Rights Index provides access to country-specific human rights information emanating from international human rights mechanisms in the United Nations system.

[76] Response by Paraguay.

[77] Response by Ukraine.

involvement of all levels of government from the outset helps to ensure their continued engagement through to the implementation phase. The creation of (inter-)ministerial or inter-institutional bodies with a clearly designated lead ministry, which also include NHRIs and civil society, can enhance the capacity for timely action. Ensuring the involvement of the same bodies or processes for consultation and coordination with regard to prevention of human rights, as for implementation of recommendations from human rights mechanisms, can contribute to effectiveness, coherence and consistency.

39. Planning, monitoring and accountability related to the human rights commitments contained in the new post-2015 Agenda will also be key. States have reaffirmed in the final draft of the sustainable development goals that the new post-2015 Agenda would be guided by the purposes and principles of the Charter of the United Nations, including full respect for international law; and grounded in the Universal Declaration of Human Rights, international human rights treaties and other international instruments such as the Declaration on the Right to Development.[78] Achieving the effective implementation of the Agenda will depend on the creation of a strong "follow-up and review" framework to ensure that commitments are met.[79]

IV. Role of international and regional stakeholders in prevention

40. International and regional stakeholders can assist States in identifying and proposing remedial action in relation to gaps or weaknesses in protection, laws, policies and practices, including through the Universal Periodic Review.

A. International and regional human rights mechanisms

41. International and regional human rights mechanisms[80] complement and assist national processes for prevention of human rights violations, through external insight and expertise with regard to the situation, laws, policies and practices, drawing on their knowledge of practices and challenges faced by other States. They also encourage interaction and engagement between the State and other stakeholders on human rights issues, and serve to inform the content of rights as their recommendations are often public. The Human Rights Council has recalled its role in the prevention of human rights violations through cooperation and dialogue, in accordance with General Assembly resolution 60/251 (A/HRC/RES/24/16, preamble). While the international system brings a global perspective and universality to human rights protection, regional mechanisms may have a "greater capacity for early detection, and could draw on experience from comparable situations in

[78] Final draft of the Post-2015 outcome document dated 8 July 2015, para 10. See also for example, draft goal 16 ("Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels") which would inter alia seek to strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, to prevent violence and combat terrorism and crime; and promote and enforce non-discriminatory laws and policies for sustainable development.

[79] "Integrating Human Rights into the Post-2015 Development Agenda - Follow-up and Review: Ensuring Accountability for the SDGs" (OHCHR, May 2015).

[80] These include United Nations mechanisms, and those established, for example, by the European Union, Council of Europe, Organization for Security and Cooperation in Europe, African Union, and Organization of American States. See K. Martin-Chenut and S. Turgis in E. Decaux and S. Touzé, *La Prévention des Violations des Droits de l'Homme* (footnote 3 above); Linos-Alexandre Sicilianos, *The Prevention of Human Rights Violations*, Parts I and II (Athens, The Hague, New York, Martinus Nijhoff, 2001).

regional countries… some countries respond better to examples drawn from neighbouring countries" (A/HRC/28/30, para. 18).

42. These mechanisms typically monitor the implementation of human rights obligations through the consideration of periodic reports and examination of individual communications. In their views on such communications, relevant mechanisms not only consider whether or not a violation has occurred in an individual case, they also provide an analysis of their causes, as well as identify what action should be taken to prevent recurrence.[81] Complaints mechanisms may also directly prevent human rights violations through their interim measures provisions.[82] Another example of the functions of international and regional mechanisms includes friendly settlement procedures of the Inter-American Commission on Human Rights, which seeks to guarantee non-repetition to prevent future violations of human rights.[83] These guarantees have included adoption of new laws and repeal of existing ones,[84] implementation of public policies designed to protect human rights, and human rights training for public officials.[85]

43. Mechanisms for the prevention of torture,[86] the special procedures established by the Human Rights Council and some treaty bodies undertake country visits and produce thematic reports and studies. Many also contribute to prevention by developing new standards and guidelines, and assisting States in the interpretation of provisions included in human rights instruments. Some are mandated to conduct inquiries or early warning or urgent actions which have the prevention of human rights violations as their primary objective.[87]

44. The Universal Periodic Review is a unique process through which the human rights records of all United Nations Member States are considered. It constitutes an opportunity for States to provide information on action taken to improve the human rights situation and to overcome challenges to the enjoyment of human rights by all individuals within their jurisdiction. It can assist States in identifying potential violations and ways in which to address them, including through sharing of good practices. Follow-up to recommendations has led to positive legislative and policy change.[88]

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[81] For example, the Human Rights Committee commended "the prompt response and the measures taken by the State party to remedy the infringements on religious freedom identified in the Committee's views in Communication No. 1155/2003 [*Leirvåg v. Norway*, Views adopted on 3 November 2004], including the adoption of amendments to the Education Act" (CCPR/C/NOR/CO/5).

[82] Some mechanisms may, at any stage before a case is considered, issue a request to the State for "interim measures" in order to prevent any irreparable harm to the author or alleged victim in the particular case. Typically, such requests are issued to prevent actions that cannot later be undone, for example, the execution of a death sentence or the deportation of an individual facing a risk of torture.

[83] Inter-American Commission on Human Rights, Impact of the Friendly Settlement Procedure (OEA/Ser.L/V/II. Doc. 45/13 of 18 December 2013).

[84] Ibid., p. 52.

[85] Ibid., p. 6.

[86] Including the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Council of Europe Committee on the Prevention of Torture.

[87] E.g. Committee on the Elimination of Racial Discrimination's early warning and urgent action procedure; communications procedure of special procedures.

[88] See "A National Human Rights Action Plan – Uganda follows through on its commitment to the Universal Periodic Review", available from http://www.ohchr.org/EN/NewsEvents/Pages/UgandaNationalHumanRightsActionPlan.aspx.

B. Contribution of international and regional organizations to prevention

45. International and regional organizations, including the United Nations,[89] contribute to the prevention of human rights violations through their respective mandates by supporting States to fulfil their obligations in respect of human rights.[90] General Assembly resolution 48/141 specifically mandates OHCHR to "play an active role in removing the current obstacles and in meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations throughout the world". OHCHR provides technical expertise and capacity development to assist governments to fulfil their obligations, support individuals to claim their rights and speak out objectively on human rights violations.[91] Further, for example within the Council of Europe, States may seek assistance in preparing laws or assessing their compliance with human rights standards from the Council of Europe Human Rights Directorate and its European Commission for Democracy through Law (Venice Commission).

46. The recent launch of the Human Rights up Front (HRuF) initiative has reinforced the crucial role of the United Nations in prevention. HRuF is a United Nations Secretary-General's initiative designed to ensure that the United Nations system takes early and effective action to prevent or respond to serious and large-scale violations of international human rights or humanitarian law, as mandated by the Charter of the United Nations and resolutions. The primary focus is on prevention and in ensuring that all United Nations entities place the protection of people's human rights at the heart of United Nations strategies and operational activities,[92] while supporting States' action to discharge their responsibilities.

47. Indeed, many crises are the result of protracted and dynamic processes that have at their root long-lasting patterns of violations of a range of rights that, for not having been addressed early enough, have fuelled instability, violence and conflict. A United Nations-wide response requires that early signs of violations are identified and acted upon in a timely manner. For this purpose, the early availability of human rights information and analysis, linking patterns of violations of rights with political and security developments, is key. Alongside United Nations human rights field presences, human rights mechanisms collect a wealth of information on human rights issues, including on gaps in human rights protection, risks of violations and patterns, scale and nature of violations. This information, when effectively analysed, coordinated and channelled, has informed the development of strategies and responses in partnership with States, as well as decisions on the best course of action by the United Nations. By placing the focus on prevention, the HRuF initiative strengthens this link between violations as early warning signs and early action by the United Nations.[93]

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[89] One of the purposes of the United Nations is "to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace" (Article 1, Charter of the United Nations). The role of the International Criminal Court and similar bodies in complementing and reinforcing national criminal justice processes can also assist in preventing impunity and future human rights violations.

[90] Response by Italy.

[91] E.g. OHCHR's report on technical assistance and capacity-building options for integrating human rights into national policies, drawing from worldwide best practices in that field (A/HRC/27/41).

[92] Available from http://www.un.org/sg/rightsupfront/

[93] HRuF is beginning to result in changes in the way the United Nations internally approaches situations involving violations. For example, it provided the conceptual cover and institutional backing for the decision by the leadership of the United Nations Mission in South Sudan to open the gates of the United Nations compounds to protect civilians seeking shelter. During the crisis in the Central

V. Conclusions and recommendations

48. **Prevention of human rights violations is primarily the responsibility of the State. It requires a proactive, continuing and systemic process of addressing risk factors and causes of human rights violations through a range of measures, including law, policy and practice, to ensure respect for and protection of all human rights for all those within the State's territory or jurisdiction. International and regional organizations contribute to the prevention of human rights violations through their respective mandates by supporting States to fulfil their human rights obligations.**

49. **A framework for the prevention of human rights violations requires the ratification of human rights treaties and their implementation at the domestic level; regular and independent review of existing and proposed laws and policies for compliance with those provisions; and ensuring effective remedies for human rights violations that provide redress for the victim and institutional change to prevent recurrence. This in turn requires the establishment of independent institutions, including NHRIs and an accessible and effective legal system.**

50. **A culture of human rights compliance should be developed through effective, independent, transparent monitoring and inspection, which engages critically and constructively with all stakeholders, including rights holders, in particular women and members of the most vulnerable and marginalized groups.**

51. **Effective human rights education, which develops knowledge, skills and attitudes prompting action for human rights and uses sound methodologies, is essential and complementary to other preventive measures.**

52. **States must protect against human rights abuse by private actors and may breach their international human rights law obligations where they fail to take appropriate steps to prevent, investigate, punish and redress private actors' abuse. States should consider the full range of permissible preventative and remedial measures, including policies legislation, regulations and adjudication. Concomitantly, private actors should also respect the human rights of others, and business enterprises should comply with their responsibility to respect human rights. This requires taking adequate measures for the prevention, mitigation and, where appropriate, remediation of adverse human rights impacts.**

53. **The State should provide an enabling environment for NHRIs and civil society to perform their functions, which will further contribute to its primary responsibility to prevent human rights violations. NHRIs and civil society provide independent expertise, assistance to victims, information to the public and specific groups about their rights and how to access them, and undertake other functions such as visiting places where persons are deprived of liberty.**

54. **Planning and monitoring tools, including human rights impact assessments, can assist States to promote and protect human rights, and prevent violations thereof through human rights indicators, collection and analysis of statistics, taking into account the OHCHR framework (HR/PUB/12/5).**

African Republic in 2013-14, the HRUF approach created a renewed sense of responsibility among United Nations senior leadership of the need to address the crisis from a human rights protection perspective.

55. **International and regional human rights mechanisms bring independent expertise and provide impetus for national action and reflection. Complaints procedures and early warning mechanisms can also contribute to the prevention of human rights violations.**